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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

AMERICAN TELNET, INC., a Florida corporation and)	CIVIL ACTION
OLYMPIC TELECOMMUNICATIONS, INC., a)	
Delaware corporation,)	NO: 3-99-CV-0280-D
)	
Plaintiffs,)	
)	
v.)	AFFIDAVIT OF RICHARD J.
)	GORDON IN SUPPORT OF
)	PLAINTIFFS' APPLICATION
GTE Corporation, a New York corporation; GTE)	FOR PRELIMINARY
Arkansas Incorporated, a Delaware corporation; GTE)	INJUNCTION
California Incorporated., a California corporation; GTE)	
Florida Incorporated., a Florida corporation; GTE)	
Hawaiian Telephone Company Incorporated, a Hawaii)	
corporation; GTE Midwest Incorporated, a Delaware)	
corporation; GTE North Incorporated, a Wisconsin)	
corporation; GTE Northwest Incorporated a Virginia)	
corporation; GTE South Incorporated, a Virginia)	
corporation; GTE Southwest Incorporated, a Delaware)	
corporation; Contel of Minnesota, Inc., a Minnesota)	
corporation; Contel of the South, Inc., a Georgia)	
corporation.)	
)	
Defendants.)	
)	

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.

RICHARD j. GORDON, being duly sworn, deposes and says:

1. I am chairman of the Electronic Commerce Association, a trade organization, dedicated to facilitating the development of electronic commerce. The Electronic Commerce Association (ECA) aggressively promotes the interests of its members, while encouraging fair business practices within the industry by educating its constituents, regulators and the public. I

practices within the industry by educating its constituents, regulators and the public. I am also the CEO of the Association of Internet Professionals, a non-profit trade association, and through my controlled corporations, the publisher of "Infotex", a bi-monthly trade publication for the pay-per-call industry, the publisher of "Audiofax", a weekly newsletter for the pay-per-call industry, the publisher of "TransActions", a weekly newsletter for the electronic commerce industry, and the founder and former chairman of the Teleservices Industry Association (TSIA), the trade association for the pay-per-call industry in the United States.

2. I have been actively involved in the telecommunications industry for more than 25 years as an inventor, consultant, entrepreneur, merchant banker and network operator. I hold numerous United States patents on telecommunication technology.

3. In 1989, I was retained by System 800, the first company to market pay-per-call services on a nationwide basis, to provide consulting services to them for their pay-per-call activities. I have been directly involved in the pay-per-call industry for the last ten years. The pay-per-call industry provides telephonic information services in the form of prerecorded and live programs known in the telecommunications industry as "audiotext services" to members of the calling public who are charged at a designated rate per minute for the use of those audiotext services. The pay-per-call services are commonly known as 900 or 976 numbers. The pay-per-call industry is comprised of independent business enterprises as well as the various telephone companies located throughout the United States that provide telephone services to consumers. The telephone companies often provide the same kinds of audiotext services and directly compete with companies that strictly provide pay-per-call services.

4. In early 1990, System 800 was seeking an alternative to Visa/Mastercard billing and launched "Connect Card," which was the first attempt to direct bill consumers for audiotext

System 800 spent hundreds of thousands of dollars writing software and building systems in an effort to provide consumers with direct billing for audiotext services. That effort, as well as the numerous efforts since then, have been a failure.

5. There are a number of reasons why direct billing of End Users for telecommunication services is inefficient and impractical. First and foremost, according to a 1998 survey of its subscribers done by Ameritech Corporation, the Regional Bell Operating Company in the midwest, consumers prefer to receive one bill for all of their telecommunications services. Most users of audiotext services are accustomed to paying for all of their telephone services at one time, through their phone bill, through their LEC's monthly bill and resist the efforts of audiotext service providers to separately and independently bill for their services.

6. There is a substantial problem in accurately linking billing and address information to telephone numbers from which audiotext calls originate. Even when the audiotext service provider can obtain the correct name and address for a telephone number, pay-per-call bills are relatively small in dollar volume and are frequently uneconomical to bill on a stand-alone basis. Furthermore, once a bill has been rendered, the costs for follow-up collection on unpaid invoices far exceed the economic benefits that can be realized by collection efforts.

7. Based on my ten years of experience in the pay-per-call industry, personal experience with attempts to direct bill and years of discussions with others in the audiotext services industry who have attempted to direct bill, the rate of collections realized from direct billing of end users for audiotext services is less than 10% of the gross billing.

8. While there are some of the same factors present when the audiotext service providers issue bills for their services through the LEC, historically between 65% and 75% of these billings are paid. After charge backs and adjustments, the audiotext service providers net approximately 50% of the total gross billings, rather than less than 10% through private billing.

9. In *MCI Communications v. American Telephone & Telegraph Co.*, 708 F.2d 1081 (7th Cir.), *cert. denied*, 464 U.S. 891 (1983), Judge Green required the Regional Bell Operating Companies to provide consumers with a link to competitive companies that provide telecommunications services through the local telephone system.

10. On September 28, 1998, I testified before Congress in support of regulation of the LECs based, in part, on the *MCI* holding. Judge Green's ruling requires LECs to provide equal access to the Bell System, and that equal access includes, of necessity, equal access to the billing system. Accordingly, the *MCI* ruling fundamentally requires that LECs permit their competitors, including audiotext pay-per-call service providers, to bill for telecommunications services through the local telephone system. Attached hereto as Exhibit "A" is a copy of the testimony that I gave to the House Telecommunications Subcommittee on September 28, 1998.

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11. Based on my industry experience and knowledge of the laws and regulations affecting conduct of the LECs, there is no greater potential for restraint of trade than to have LECs competing with third party vendors that provide the same services to consumers while the LECs control access to the local phone bill page.


RICHARD J. GORDON

Richard J. Gordon is:

____: personally known to me;
____/____: known to me through examination of California Driver's License
No. C3515109;
____: known to me through the oath of _____.

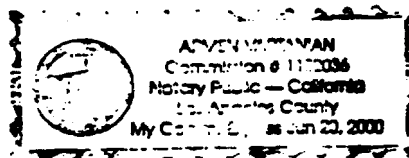
SUBSCRIBED AND SWORN TO BEFORE ME on this 5th day of March, 1999.



Notary Public, State of California

My Commission Expires:

Jun 22, 2000



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BEFORE THE FEDERAL TRADE COMMISSION

IN RE:)
PAY-PER-CALL WORKSHOP.)

THURSDAY, MAY 20, 1999

FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, N.W.
Room 432
Washington, D.C. 20850

FTC PARTICIPANTS:

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P A R T I C I P A N T S

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Services Commission

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ANTHONY TANZI, IAN EISENBERG, Association of
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RICHARD GORDON, ERIC LEE, LARRY GOOD, Electronic
Commerce Association

KRIS LAVALLA, JOHN GOODMAN, Bell Atlantic

JEFF KRAMER, AARP

JACQUELENE MITCHELL, Coalition to Ensure
Responsible Billing

GARY PASSAN, Teleservices Industry Association

DEBORAH HAGAN, JILL SANFORD, NAAG

PETER BRENNAN, Tele-publishing, Inc.

PHILIP PERMUT, DANNY E. ADAMS, Cable & Wireless,
(W.I.) Inc.

ADELE SIMPSON, International Telemedia
Association

LORETTA GARCIA, Esq., Dow, Lohnes & Albertson

DAVID MATSON, HELEN-SCHALLENBERG-TILLHOF, Sprint

(Appearances continued on next page.)

(Appearances continued.)

P A R T I C I P A N T S

RICHARD BARTEL, Communications Venture Services

LINDA YOHE, MARK FARRELL, SBC Communications

SUSAN GRANT, National Consumers League

CHARULATA B. PAGAR, JOHN AWERDICK, Promotion
Marketing Association

answer.

MS. HARRINGTON: Gary?

MR. PASSAN: We certainly applaud your comments, and I think that's very consistent with how we feel. This is a consumer issue. The LEC vendor relationship has a -- has a dissymmetry which I think we're all very clear about, and that is the LECs are very large. They own the last mile to the home and they have an incumbent position.

The third parties that wish to use the LEC bill which has been promulgated through regulation and legislation and are out there trying to do the best job they can. There are certainly companies out there that have been abusive of that, but I think that the rule can improve the relationship in a couple of fundamental ways.

First, the most timely information about a consumer is passed forward, the less confusion there is going to be in a consumer's mind. If in fact when the service bureau or a vendor hears about the fact that a consumer has disputed a transaction a year later, it makes it difficult to carry a substantive and reasonable conversation or modify the behavior of your system or provide or improve your service.

So therefore it's absolutely critical that the

charge back information be disseminated in an extremely timely manner, and I think from a competitive perspective, the fact that the LEC can withhold that information and can be a competitor of third parties allows them to have a distinct competitive advantage over the third parties because they know who is paying and who isn't paying.

So it seems to me that information should be disseminated as quickly as possible, and I'll go back to my earlier point, it should be disseminated with a billing name and address so we can contact the consumer so we can resolve whatever the dispute is and non payment issue in the most timely manner possible.

MS. HARRINGTON: I would like to point out the next question too and encourage especially the LECs to jump in, why don't LEC makes BNA and TDDRA blocking information available to vendors, and Mark Hertzendorf has a question as well.

MR. HERTZENDORF: I'm wondering if any of the LECs currently preclude secondary collection by vendors after they forgive charges, and if anyone wants to approach that topic from any angle, I would be interested in hearing what you had to say.

MS. HARRINGTON: Linda?

MS. YOHE: I'm not sure which question to answer

first. We do provide billing information. It's a product tariff, interstate and intrastate tariffs. My presumption here is that for TDDRA-blocking information, that that's blocking what we have that would preclude a 900 to be dialed.

Therefore, I'm not sure what the problem is with associating that with billing name and address because otherwise they would have to dial a number besides the 900 to get to the vendor, which wouldn't allow the vendor to have -- if they have express authorization that's required, why would the vendor not have that customer's billing and their address through that process?

Because certainly TDDRA blocking is the 900 blocking at the switch which means that that call wouldn't go through that way. Therefore the customer would have had to dial it a different way of accessing that information or those services being provided by the vendor.

So I'm a little bit confused about why the vendor if they're getting authorization, express authorization, from the customer wouldn't be able to get customer name and address from that, but specifically we do have billing name and address and it's available.

MS. HARRINGTON: Let me ask a question of Albe.

Does the availability of BNA in product form meet your objective or is there something else that you're looking for here?

MR. ANGEL: The availability as a product is a beneficial thing. It's not universally available and where it is available it's expensive and sporadic and out of date.

MS. HARRINGTON: Okay. John? You're not John. Kris. I'm sorry. John's gone. Kris is back. Kris.

MR. LAVALLA: Bell Atlantic HAS also offered BNA as a product intrastate THROUGH and the FCC and further we offer a product through our care process which also provides billing NAME and address and that's available to any carrier as well as clearinghouses so it is available.

If it's an issue of price, that's a different issue. It is available and to my knowledge it's up to date. It's not stale information which should be available.

I guess I would reiterate what Linda said, we're not sure from a TDDRA perspective when we block 900 what the value of knowing that because it's a switch issue, and if I dial a number the call doesn't go through so there's no need to have that information or what would you do with the information I will get? I would pose

the question like that.

MS. HARRINGTON: I would like one of the vendors to respond to Kris's question and then Marianne has a question. Would one of the vendors, Peter, would you explain the value of TDDRA blocking information to the vendor?

MR. BRENNAN: The basis on which we believe the value of having that information is so we can understand who our consumers are. Again it's -- I don't know any more general way to put this. It's disingenuous for FTC and Bell Atlantic to suggest they provide BNA when they only provide it to carriers or people that have specific agreements with them. That information is not. It's only in the case of Bell Atlantic that information is not available to vendors.

MS. HARRINGTON: Can you hold on a second. Kris, is that true that this information is not available to vendors?

MR. LAVALLA: It's not available to service providers. It's available to our consumers whether they be carriers or clearinghouses but not --

MS. HARRINGTON: So vendors can't get BNA information from Bell Atlantic.

MR. LAVALLA: That's correct.

MS. HARRINGTON: Okay. Peter, continue.

MR. BRENNAN: I forgot what the second part of the question was.

MS. HARRINGTON: I'll come back to you, no problem. Albe and then Richard, please.

MR. ANGEL: I wanted to give a good example of part of the dynamic here and the problem. Just a moment ago we were talking about blocking, and the observation was made that there is TDDRA blocking at the switch, and before we had a discussion about billing errors and whether or not -- let's envision a consumer who calls and says, you know, I put a block on 900 and lo and behold there's a charge on my bill which is 900.

Now, in that instance the local exchange carrier might in fact be handling that inquiry but it's my basic understanding in that context that if the block were to be inserted by the local exchange carrier and they failed to do it and the consumer was charged, that charge back would go back to the information provider, reduce their revenues, result in frustration on the consumer part and LEC would have no financial responsibility.

It would pass the payment done the line, so to the extent the National Association of Attorney Generals identified failure of blocking to work as a billing error I think that's a great suggestion, and moreover I

relationship with the consumers on a quick basis.

I can tell you I've sent files off to some of these LECs and it's been six to eight weeks before I've gotten back the BNA responses. Other ones they have online systems that are very sufficient and work very, very well.

I don't believe I can go to SBC today, and if I put my 900 provider hat on, I don't think I could get a BNA relationship from you guys. I know that for a fact.

MS. HARRINGTON: Let me ask that question directly. Linda, do you make BNA information --

MS. YOHE: To carriers and clearinghouses that have a BNA relationship with us.

MS. HARRINGTON: But not to people whose only relationship is a vendor using us as a billing entity.

MS. YOHE: I believe the tariff is related to carriers.

MS. HARRINGTON: So that's a no.

MS. HARRINGTON: No. Marianne has a question.

MS. SCHWANKE: It sounds to me like Bell Atlantic and SBC provide BNA to clearinghouses, that an alternative source of BNA if the providers in the service bureaus have their contracts with the clearinghouses and the clearinghouses can get BNA. Why can't service vendors get that from a clearinghouse?

think we should enhance that by saying, and it's a LEC's responsibility to pay for it.

MS. HARRINGTON: Richard, are you taking your post-it down?

MR. BARTEL: Yes.

MS. HARRINGTON: Gary?

MR. PASSAN: I can speak somewhat for our company, and I was conferring with another member of our association, we've spent the last probably year trying to get BNA from the LECs. I think at this point we have about 70 percent coverage, substantial set up fees, very substantial rules and regulation. We had to go out and get ourselves a CID code so we could register our --

MS. HARRINGTON: A what?

MR. PASSAN: A CID code, carrier identification --

MS. HARRINGTON: Carrier, it relates to the SS7.

MR. PASSAN: Yes, for a couple quarter million dollars we can explain all that, but we've had to jump through a lot of hoops, and I think really to go to the source of this, I think all we're really asking for is is that this ruling bring forward something that says that this information will be made available, will be made available on a timely manner to the vendors so that we can do what we need to do in terms of building a

MS. MITCHELL: I'm not a contract -- Jacque Mitchell, I'm not a contract expert but I would imagine that there's some language in that contract between the clearinghouse and the local exchange carrier that would prohibit us from reselling that information using it perhaps for our own use but I would think -- I don't know that.

MS. HARRINGTON: Kris.

MR. LAVALLA: There is some restrictions in the tariff which says that the information being provided can only be used for the purpose of a billing. Whether I guess that would be a legal call whether -- you certainly wouldn't be able to resell that information or pass it down the line.

But if it was one of your consumers had requested specific information for the purposes of billing and you had it from us, that may be available. I think it would be a question to ask from a legal perspective. We wouldn't want to give you BNA information on consumers just to have you disseminate it to all your consumers.

MS. HARRINGTON: Marianne?

MS. SCHWANKE: I might just have a misunderstanding about billing collection and tariffs, but it's my understanding that billing collection is a

and whether the charges is unauthorized as far as the consumer's view of what that charge is, proper or not.

MS. HARRINGTON: Thank you, Mr. Slaiman. Anyone have any questions for Mr. Slaiman? Great. Walt Steimel.

MR. STEIMEL: Walt Steimel, Hunton & Williams representing Pilgrim Telephone. With respect to BNA I think with bill name and address accuracy, timeliness and the format are all problems. As Mark Farrell from Southwestern Bell noted in his comments, when consumers call on one service, they don't want to wait 30, 60 or 90 days to get service, they want to get services now especially in a telecommunications and electronic format.

BNA is not provided on a real time basis right now and it's often provided only in payment records after requested by the LEC with significant time delay so there's an accuracy problem which I believe a lot of parties have commented on in this proceeding.

The fact that there's no instant access to billed name and address means there's no way that a service provider or competing character can verify who they're speaking with on the phone.

If I were to call in to a service provider and try to set up an account, either written subscription

calling card or other access member, I could tell him I was anybody in the world, there's no way they could verify that for 30, 60 or 90 days, and once the charges are passed through there's almost no way I can go back and find those people and bill them.

So the lack of access to real time BNA from the LECs fundamentally prohibits any other billing method other than elect billing.

MS. HARRINGTON: Walt, is this a cost issue or access issue or both?

MR. STEIMEL: It's a cost issue. It's my understanding from speaking with the LECs there's also the 900 block information, I'll skip the cost. It's my understanding from speaking with some of the LECs that they would probably be willing to provide real time BNA in 900 block information in line information database type format if they would guarantee they would get cost recovery for that.

It's further my understanding that in an earlier FCC proceeding several years ago the FCC initially encouraged some of the LECs to build this kind of platform, it's a software routine that would screen out their proprietary information from BNA and blocking information so a competitor would only be able to see what's absolutely necessary and not have access to the

rest of the database.

And then later the FCC changed their mind and some LECs had a significant investment that was lost.

I think what we need is directions from the agencies telling the LECs to make real time BNA and 900 blocking information available on a real time dial up basis through a similar database but also to provide them with a guaranteed mechanism for recovering their costs for doing the software development necessary.

And that way there's no averse cost incentive. In fact they could make a profit from selling this information to vendors, and it would make the information available to vendors, and the agency's requirement to look up this information and use as part of the call verification process and part of their call blocking process.

The last point has to do with ANI billing, and I think it looks like to me there are three types of fraud in ANI billing. There's fraud by vendors, fraud by third parties and fraud by consumers.

On fraud by vendors it seems as though there should be a presumption or you could set up a situation in which there's a presumption in favor of the consumer, when they make a call, deny all knowledge of the call, presumption shifts to their favor until such time as the